



Comptroller General
of the United States

Washington, D.C. 20548

J. Lebowitz

Decision

Matter of: Cajar Defense Support Company

File: B-238585

Date: June 4, 1990

Mason Ford, for the protester.
Vera Meza, Esq., and Gerald Williams, Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award to the higher priced, higher rated offeror is proper where the solicitation provides that award could be made to other than the lowest priced offeror and that the rating for non-cost factors was more important than cost, and the agency reasonably determined that the 26 percent difference between the awardee's and the protester's ratings outweighed any possible cost savings to the government.
2. Award of a contract to a firm which has engineering, production, and fabrication capabilities to conduct an engineering shortfall analysis for an artillery fired atomic projectile and to develop a proposed approach (production and inspection plans) for the fabrication of related hardware (balance beams) does not create an organizational conflict of interest because the fabrication requirement was a sample task for technical evaluation purposes only, the agency does not contemplate any actual fabrication of the hardware, and the agency does not contemplate that work under the contract will lead to future competitive production of the items.

DECISION

Cajar Defense Support Company protests the award of a contract to Ferrulmatic, Inc., under request for proposals (RFP) No. DAAA21-89-R-0120, issued by the United States Army Armament, Munitions and Chemical Command at Picatinny Arsenal, New Jersey for an indefinite quantity of engineering, technical, and analytical services and materials for

04868C / 141519

the Nuclear Munitions Program. Cajar principally challenges the agency's evaluation of proposals and subsequent award of a contract to Ferrulmatic, a higher priced, higher rated offeror, and it also argues that the award to Ferrulmatic creates an organizational conflict of interest.

We deny the protest.

The agency issued the solicitation on August 21, 1989, as a total small business set-aside for an indefinite quantity contract, on a firm fixed price task order basis, for engineering services and materials in support of the Nuclear Munitions Program. The solicitation included task order No. 0001 that required the contractor to conduct an engineering shortfall analysis for an artillery fired 8-inch atomic projectile, and to develop production and inspection plans for the fabrication of related hardware (balance beams). The agency did not, however, contemplate the actual fabrication of this hardware and the requirement to develop production and inspection plans for the balance beams was a sample task used only for evaluation purposes.

The solicitation provided that the evaluation would be based on technical, management, competition, and cost factors, with technical more important than management, and management significantly more important than competition. The sample task was part of the evaluation under the technical factor. The competition factor encompassed the subcontractors to be used and the offeror's subcontracting plan. The technical, management, and competition point score ratings were combined into a merit rating which was considered more important than cost. Cost was evaluated on a composite hourly rate basis (i.e., for each labor category, a weighted hourly rate was calculated). The RFP further advised that award would be based on an integrated assessment of these evaluation factors and that award would be made consistent with the government's best interests. The RFP also advised that award could be made to other than the lowest priced offeror or to other than the offeror with the highest merit rating.

Three firms--Cajar, Ferrulmatic, and Nuclear Metals, Inc.--submitted initial proposals by the November 21 closing date. Following the evaluation of proposals, the agency included all three firms in the competitive range, and subsequently conducted discussions with each firm. At the conclusion of these discussions, the agency requested best and final offers (BAFOs), due by December 22, from all three firms. After evaluating BAFOs, the agency determined the firms to have the following merit ratings and composite hourly wage rates:

Merit Rating Composite Hourly Wage Rate

Ferrulmatic	97.3	36.70
Nuclear Metals	80.0	101.60
Cajar	71.3	26.40

On February 1, 1990, following the completion of the preaward survey, the agency awarded task order No. 0001 as part of the basic contract to Ferrulmatic, a small business, for \$57,999.68. By letter of the same date, the agency informed Cajar of the award, and stated that while Cajar's proposal included a low composite hourly wage rate, its technical proposal was rated considerably lower than Ferrulmatic's. This protest followed on February 12.

Cajar first argues that the agency unreasonably awarded the contract to Ferrulmatic, a higher priced, higher merit rated offeror. Cajar does not believe that Ferrulmatic's higher merit rating, reflecting a superior technical, management, and competition evaluation, justifies the higher cost of its proposal. Cajar, which received a considerably lower merit rating, believes that it should have been awarded the contract since its price for task order No. 0001 was substantially less than Ferrulmatic's, thereby resulting in cost savings to the government.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the solicitation so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565, B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Here, the RFP clearly provided that the technical, management, and competition considerations, resulting in an overall merit rating, were more important than cost and award could be made to other than the lowest priced offeror or to other than the offeror with the highest merit rating. Therefore, the agency was not required to award on the basis of the lowest priced proposal. Our Office will not question an agency's determination that the technical merit of a superior proposal is worth the extra cost in relation to a lower rated offer unless the protester shows the agency's judgment is unreasonable. Service Ventures, Inc., B-233318, Feb. 15, 1989, 89-1 CPD ¶ 162.

After reviewing the evaluation documents, we conclude that the agency's evaluation was reasonable and in accordance with the solicitation's stated evaluation scheme under which the overall merit rating was more important than cost. The record shows that Ferrulmatic received the highest merit rating because its proposal best demonstrated its capability, using primarily experienced in-house personnel and

facilities, and its understanding of the solicitation's requirements and tasks. The agency found that Ferrulmatic's proposal, using in-house resources, and its past performance indicated minimal risk in contract performance while Cajar, exhibiting limited in-house capability by relying primarily on consultants "as required," raised concerns as to the firm's capability to perform tasks. The agency noted that Cajar did not establish that its commitments from many of its proposed consultants were current. The evaluators also were concerned that Cajar did not establish with any specificity how it intended to ensure that the consultants would furnish products meeting the solicitation requirements. In addition, Cajar's proposal was viewed as reflecting a lack of experienced personnel and facilities, and an inferior approach to the tasks outlined in the solicitation. For example, the evaluators found that Cajar did not provide sufficient discussion on its approach to data reduction and report generation under this contract but, rather, furnished excerpts of an end product from another company it proposed to use under this contract. In short, the agency deemed Cajar's approach less desirable than Ferrulmatic's since it posed greater risks to the government with respect to completing the required tasks. Thus, although Cajar's composite hourly wage rate was \$10.30 less than Ferrulmatic's, we think the agency could reasonably conclude that the difference of approximately 26 percent between the two merit ratings, reflecting Ferrulmatic's superiority in non-cost areas, outweighed any possible cost savings to the government and justified the award to Ferrulmatic at a higher price.

To the extent Cajar argues that the agency exhibited bad faith towards it during the evaluation process, we conclude, based upon our review of the record as indicated above, that there is no evidence of bad faith by the agency. The record shows that the agency reasonably evaluated proposals in accordance with the solicitation's stated evaluation criteria.

Cajar next alleges that the award to Ferrulmatic of task order No. 0001 violates Federal Acquisition Regulation (FAR) subpart 9.5 (FAC 84-46) and other regulations and laws concerning organizational conflicts of interest. Cajar believes that the solicitation not only requires an engineering shortfall analysis for an artillery fired 8-inch atomic projectile and the development of production and inspection plans for related hardware, specifically balance beams, but also the actual fabrication of this hardware. Cajar essentially alleges that Ferrulmatic's business is the production of this type of hardware and that, without any restriction on Ferrulmatic's future rights to produce this

hardware pursuant to its own specifications, Ferrulmatic will have an unfair competitive advantage in designing hardware on which it can later submit an offer for production.

The FAR requires contracting officials to avoid potential organizational conflicts of interest such as where the nature of the work to be performed under a proposed government contract may, without some restriction on future activities, result in an unfair competitive advantage or will impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505. These provisions are intended to avoid the possibility of bias or unfair advantage where a contractor would be in a position to favor its own capabilities. Armament Eng'g Co., B-228445; B-228582, Feb. 8, 1988, 88-1 CPD ¶ 121. The solicitation included an organizational conflict of interest clause that applied to the entire contract and could be specifically referenced by the contracting officer in any task order where a significant potential conflict of interest existed. Under the RFP, contractors are advised that by accepting a contract, a contractor will be required to accept task orders containing conflict of interest clauses which will prohibit the contractor from submitting bids or proposals for procurements that a contractor might otherwise be interested in submitting offers. Contractors are further advised that refusal to accept tasks incorporating the conflict of interest clause will result in termination of the contract.

Here, the contracting officer reviewed task order No. 0001 and determined that the inclusion of the conflict of interest clause was not necessary. While the solicitation initially contemplated the design and fabrication of the balance beams, this portion of the task order was subsequently eliminated by amendment.^{1/} As indicated above, the solicitation specifically included as a sample task a requirement that offerors propose an approach for the fabrication of the balance beams. All firms were evaluated

^{1/} Each contractor was specifically informed, in writing, by letter dated November 30, 1989, and signed by the contracting officer (addressing the deficiencies in each offerors' respective proposal) that fabrication of the balance beams contained in section C.3 of task order No. 0001 statement of work was deleted. Since a writing signed by the contracting officer was furnished to all offerors, this letter meets the essential requirements for an amendment, and the information therein was therefore binding on all offerors. Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474.


on the basis of their response to the sample task. The sample task was intended as a screening device and the agency advises that it does not contemplate that work under this contract will lead to fabrication of the balance beams or to future competitive production of the items. Although the contracting officer concluded that award of task order No. 0001 to Ferrulmatic presents no conflict of interest issue, the contracting officer also recognizes that the scope of the solicitation is broad and states that he intends to review each task order prior to issuance to determine if a potential conflict of interest exists, and take appropriate action to eliminate the conflict, if any. Because the agency did not contemplate the fabrication of any items under task order No. 0001 and because the contracting officer will review future task orders to ensure that no conflict of interest involving Ferrulmatic exists, there was no reason for the agency to exclude Ferrulmatic from the competition.

Cajar also argues that the agency did not comply with the provision at FAR § 52.219-13 (FAC 84-31) which provides that women-owned small businesses should have the maximum practicable opportunity to participate in performing contracts awarded by federal agencies. We point out that this provision states a government policy, and does not mandate that a woman-owned small business receive special consideration in any particular procurement. KASDT Corp., B-235889, July 19, 1989, 89-2 CPD ¶ 63.

Finally, Cajar argues that the agency's notice of award pursuant to FAR § 15.1001 (FAC 84-13) was incomplete and failed to include a specific explanation of the reasons for Cajar not receiving the contract award. We find that the notice of award, dated February 1, 1990 (the same day the contract was awarded to Ferrulmatic), contained all of the relevant information required to be furnished by the agency pursuant to FAR § 15.1001(c). Specifically, the notice sent to Cajar stated that 43 offerors were solicited and 3 proposals were received; that the award was made to Ferrulmatic; that the total price for task order No. 0001 was \$57,999.68, and the total price for the basic contract was at minimum, \$50,000, and at maximum, \$2,250,000; and that Cajar's proposal was not accepted for award because while Cajar included a low composite hourly rate, its technical proposal was rated considerably lower than Ferrulmatic's. Insofar as Cajar believes that the agency

failed to give it a specific explanation of the reasons for its nonselection, FAR § 15.1001(c)(1)(v) only requires that the notice of award inform the unsuccessful offeror in general terms, as was done in this case, of the reason its proposal was not accepted for award. Norden Serv. Co., Inc., B-235526, Aug. 22, 1989, 89-2 CPD ¶ 167.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel